IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 379 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAJU @ RAJKUMAR SUGNOMAL MIRCHANDANI

Appearance:

1. Criminal Revision Application No. 379 of 2002

MR SS PATEL APP for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 17/09/2003

ORAL JUDGEMENT

The present revision application has been filed by the State of Gujarat u/s.397 read with s.401 of the Code of Criminal Procedure, 1973 (for short, "the Code")

in order to challenge an order dated 02/08/02 recorded by the learned Principal Judge, City Sessions Court, Ahmedabad in Cr.Misc.Appl.No.2323/2002 transferring Sessions Case No.184/1998 from Court No.10 to Court No.3 for further trial.

2. It appears from the record that the aforesaid sessions case was going on in Court No.10, presided over by the learned Addl. City Sessions Judge, Ahmedabad. In the said sessions case, an application was made by the learned advocate for the accused persons, who are the respondents herein; that the learned advocate was not keeping good health and therefore, it would not be possible for him to climb stairs and therefore, the said sessions case may be transferred elsewhere. The said application was dismissed by the learned Principal Sessions Judge. Thereafter, the respondents preferred Cr.Misc.Appl.No.7844/2000 before this Court. This Court passed an order dated 30/07/02 (Coram : Mr. Justice C.K.Buch) wherein it was observed that the learned Principal Judge shall take appropriate decision qua the request to transfer the sessions case made by the learned counsel for the petitioners (accused in the sessions case and respondents in this revision application) as early as possible and preferably within ten days from the date of the order.

3. Thereafter, the transfer application was heard by the learned Principal Judge and by order dated 02/08/02, the learned Judge allowed the said application and transferred the said sessions case, from one Court to another, as stated above.

4. The reasons given by the learned Judge during the course of the judgment can be reproduced from para 5 as follows;

> "Now the order was passed by the Hon'ble Justice Mr.C.K.Buch on 3.7.2002 that Principal Judge, City and Sessions Court, Ahmedabad shall take appropriate decision qua the request to transfer the Sessions Case of the learned advocate as early as possible and preferably within 10 days. It clearly shows that Hon'ble High Court has consented to transfer the said case to the another Court."

5. The State of Gujarat has preferred this revision application in order to challenge the said order of the learned Principal Judge, City Session Court at Ahmedabad. Though Rule was issued and served upon the respondents,

they have not thought it proper to appear before this Court and therefore, I have heard the learned APP for the State.

6. The learned APP has argued on behalf of the State that the above application was submitted by the learned advocate for the present respondents before the aforesaid Court stating that the learned advocate was not keeping good health and therefore, it would be difficult for him to climb stairs where the Court is situated and therefore, the case may be transferred.

7. The learned APP also states that Court No.10 from where the sessions case was sought to be transferred is situated at the ground floor and therefore, the learned advocate appearing for the present respondents, can easily appear in the said Court, which is situated at the ground floor.

8. Now, when the Court in question is situated at the ground floor, then the advocate or even the accused persons would not find it difficult in attending the said Court. Therefore, it can be said that there was no reason for the transfer of the said case from Court No.10 to another Court. It is required to be considered that in para 5 of the judgment, the learned Principal Judge has not assigned any reason for the transfer of the said sessions case from one Court to another. It is very clear that the provisions made in S.407 onwards have been made for the powers to transfer cases from one Court to another. Section 412 makes it clear that a Sessions Judge or a Magistrate making an order u/s.408, 409, 410 and 411 shall record his reasons for making such transfer. This means that it is obligatory on the part of the concerned Judge or Magistrate, to assign reasons for passing an order for the transfer of a case from one Court to another. In para 5 of the judgment, the learned Judge does not appear to have assigned any reason for passing an order for transfer of case from one Court to another. It is also required to be considered that some six to seven witnesses have already been examined by Court No.10 in the aforesaid sessions case. This fact was brought to the notice of the learned Principal Judge as can be gathered from para 4 of the judgment, wherein it has been mentioned that the learned APP for the State had submitted that the witnesses were examined by Court No.10 and that the said case should be considered in the same Court, i.e. in Court No.10.

9. It seems that this aspect has not been properly considered by the learned Principal Judge. It also

appears that the learned Principal Judge has considered the above order of this Court, as a consent given by this Court to the learned Principal Judge for the transfer of the said case from one Court to another. On a bare reading of the order of this Court, it does not convey the said meaning.

10. Anyway, the order has not been passed by assigning reasons as required by S.412 of the Code. Moreover, Court No.10 is functioning at the ground floor as stated by the learned APP. Therefore, there will not be any difficulty for the learned advocate for the contesting respondents to appear in the said Court. Therefore, there was no difficulty, either to the accused persons or to his advocate, in attending the said Court. Therefore, there was no necessity for passing an order for the transfer of the sessions case from one Court to another.

11. It is a fact that trial has commenced by framing the charge and witnesses have been examined in the case. The said aspect has not been properly considered by the learned Principal Judge, in light of the background of the provision made in S.409(2) of the said Code. Here, the charge has been framed and therefore, the trial has commenced. Even six to seven witnesses have already been examined. Therefore, the order cannot be treated to be legal and valid. It is, therefore, necessary to interfere with the said order in exercise of revisional jurisdiction. It is required to be considered that though Rule was served, the respondents have not found it proper to appear before the Court, in order to place their case before this Court.

12. For the foregoing reasons, this criminal application is allowed. The impugned order dated 02/08/02 passed by the learned Principal Judge, City Sessions Court at Ahmedabad is set aside. Naturally, the concerned sessions case will be conducted by Court No.10 of City Sessions Court, Ahmedabad. Rule is made absolute. Direct service permitted.

13. Before signing this judgment, learned colleague of Mr H N Zala, learned Advocate for the respondents appeared at 4.45 p.m. and requested that the learned Advocate appearing for the contesting respondents may be permitted to address the Court on behalf of the contesting respondents. Accordingly, Mr H N Zala, learned Advocate for the respondents was heard. It has been contended by Mr Zala that this Court had passed an order for transfer of the Sessions Case and the learned

Principal Judge was directed to select the Court where the matter may be transferred. The order of this Court passed in Criminal Misc.Application No.7844/2000 passed on 30.7.2002 (Coram : Hon'ble Mr Justice C K Buch) does not appear to be an order of transfer of the said Sessions Case from one Court to another. The relevant portion of the said order is reproduced for ready reference:

"4. Under the circumstances, considering the nature of submissions and totality of the facts and circumstances of the case, it is ordered that learned Principal Judge, City & Sessions Court, Ahmedabad shall take appropriate decision qua the request to transfer the Sessions Case made by the learned counsel appearing for the petitioners as early as possible and preferably within ten days from today. In the meanwhile, interim relief granted by this Court shall continue. It is clarified that in the event of non-acceptance of the request made by learned counsel appearing for the petitioners to transfer the Sessions Case, it would be open for the petitioners to approach this Court afresh."

13.1 In my reading of this order, the learned Judge of this Court simply directed the learned Principal Judge, City Sessions Court, Ahmedabad to take appropriate decision with respect to the request to transfer the Sessions Case, made by the learned Counsel appearing for the petitioner as early as possible and preferably within 10 days from the date of the order. In my reading of the said order of this Court, the learned Judge did not direct the learned Principal Judge, City Sessions Court to select a particular court for transfer of the said case or even this Court did not direct the learned Principal Judge, City Sessions Judge to transfer the said Sessions Case from one court to another. Therefore, it cannot be said that this Court had already passed an order for the transfer of the aforesaid Sessions Case from one court to another.

14. In that view of the matter, it would be necessary to consider the provisions made in sub-section (2) of section 409 of the Code of Criminal Procedure which may be reproduced for ready reference:

"At any time before the trial of the case or the hearing of the appeal has commenced before the

Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge."

15. It is very clear from a bare reading of the said provisions that a Sessions Judge can recall any Sessions Case or Criminal Appeal from the Court of any Addl.Sessions Judge before the trial has commenced. Now in the present case, I find that the charge has already been framed and even recording of evidence by the Court (court no.10) has also commenced and therefore, the trial has commenced in the aforesaid Sessions Case and, therefore, technically speaking, the learned Sessions Judge was not required to transfer the Sessions Case from one court to another.

16. In the alternative, Mr H N Zala, learned Advocate has requested that since the witnesses have been examined by the learned Addl.Principal Judge of the City Sessions Judge, with a view to enable the learned Presiding Officer of Court No.10, it would be appropriate to direct that the witnesses examined by the learned Addl.Prinipal City Sessions Judge, Court No.3 be re-examined by Court No.10 and if this is done, the learned Presiding Officer of Court no.10 will be in a position to record the demeanor of those witnesses. When the witnesses have already been examined and when it is not on record that the demeanor of the witnesses has been recorded by the learned Presiding Officer of Court no.3, then in that case, it is not necessary to direct examination of those witnesses again. Therefore, the said request is not accepted.

(D. P. Buch, J.)

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